

)	
GERALDINE B. LUMPKIN, Appellant)	
)	
and)	Docket No. 03-1149
)	Issued: February 18, 2004
U.S. POSTAL SERVICE, Birmingham, AL,)	
Employer)	
)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

On April 2, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated December 18, 2002, terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective December 2, 2001 on the grounds that she had no further disability causally related to her June 1, 2000 employment injury; (2) whether the Office properly terminated appellant's authorization for medical benefits; and (3) whether appellant has established that she had any continuing disability after December 2, 2001 due to her accepted employment injury.

FACTUAL HISTORY

On July 26, 2000 appellant, then a 45-year-old window clerk, filed a traumatic injury claim alleging that on June 1, 2000 she injured her right side, left hip and foot when she fell out of her chair. The Office accepted appellant's claim for lumbago and paid her compensation beginning July 29, 2000.¹

In an office visit note dated January 17, 2001, Dr. Dewey Jones, III, a Board-certified orthopedic surgeon and appellant's attending physician, released her to return to work on January 29, 2001 with physical accommodations.

By letter dated January 19, 2001, the Office referred appellant, together with the case record and a statement of accepted facts, for a second opinion evaluation.

In a disability certificate dated January 29, 2001, Dr. Jones indicated that appellant should remain off work "until further notice."²

In a report dated February 27, 2001, Dr. Sandra L. Durham, an internist, discussed appellant's history of injury and listed findings on physical examination.³ She noted that appellant reported symptoms of pain "in the low back, right hip, right leg, neck, arms, shoulders, wrists and joints" after to falling out of a chair on June 1, 2000. Dr. Durham found that appellant had an "exaggerated response on physical exam[ination]." She concluded:

"It is my opinion, [appellant] needs to return to work. I cannot positively see how she could have all of the disability that she claims to have from the injury she describes. She may very well have some problems, but it is my opinion that they do not relate to the on-the-job injury that is alleged on June 1, 2000."

In a report dated March 23, 2001, Dr. John D. Crompton, a Board-certified orthopedic surgeon and Office referral physician, discussed appellant's work and medical history, which he noted included reflex sympathetic dystrophy due to an injury in the 1980s which was treated with a right sympathectomy. On examination, Dr. Crompton stated:

"It is of note, as I examined her in a seated position and attempt[ed] to rotate her hip, she jumped violently across the table and complained of pain throughout her entire body. She said it mainly focus[ed] around her knee. I assume this because she was under the assumption I was examining her knee, when in fact I was trying to get a ROM [range of motion] of her hip. Basically, she refused to let me move her hip through any internal/external rotation, which would be entirely inconsistent with the motion that I clearly saw her do as she walked across the

¹ Lumbago is defined as pain in the lumbar region. *Dorland's Illustrated Medical Dictionary*, (29th ed. 2000).

² In a report dated February 28, 2001, appellant's nurse, assigned by the Office, related that appellant returned to work on January 29, 2001 but left after 30 minutes. The nurse noted that Dr. Jones took appellant off work pending further evaluation.

³ Dr. Jones referred appellant to Dr. Durham for evaluation.

room, arose to a seated position, [etcetera]. Basically, any type of straight leg raise exam[ination] or anything along those lines was impossible. Palpation of her spine showed her to have tenderness throughout the entire spine. Again, she jumps violently across the table as I did even the slightest touch throughout the lumbar region and even [the] thoracic region.”

Dr. Crompton diagnosed malinger. He stated:

“I think, as I explained to her, that there is absolutely no physical condition that can cause her type of symptoms. However, I assume it is possible that her right leg pain could be secondary to some sort of reflex sympathetic dystrophy from some sort of injury to her sciatic nerve. Therefore, I would recommend her to be evaluated by a neurologist and have nerve conduction studies of her right lower extremity. If in fact these are normal, I think that it would entirely release her from the realm of work[ers’] comp[ensation] and she could be released back to full duty with no restrictions whatsoever.”

Dr. Crompton concluded that, based on appellant’s history and physical examination, it was not possible that she had “any type of physical condition that could cause her symptom complex.” In an accompanying work restriction evaluation, Dr. Crompton found that appellant could work eight hours with no restrictions if she had a normal neurological examination.

In a follow-up report dated April 16, 2001, Dr. Jones indicated that he had reviewed the reports of Drs. Durham and Crompton and noted that the physicians found that she could resume work. He diagnosed either fibromyalgia or a conversion reaction and opined that he had nothing further to offer her from an orthopedic standpoint. Dr. Jones stated, “[a]s far as her work is concerned, I do [not] know that we found any particular physical reason she could [not] do that but psychologically we have already sen[t] her back to work and it just did [not] last.”

In a report dated April 30, 2001, Dr. Gordon J. Kirschberg, a Board-certified neurologist, listed findings on examination and performed an electromyogram (EMG). Dr. Kirschberg opined that appellant’s EMG was normal “notwithstanding the poor voluntary recruitment” with “no evidence of radiculopathy, neuropathy or other entrapment phenomenon noted.” He further found no evidence of any objective abnormality including an injury to the sciatic nerve and reflex sympathetic dystrophy. He recommended a magnetic resonance imaging (MRI) scan of the lumbar spine and noted that, if it were normal, “I would go no further and agree with her previous physicians that no medical diagnosis can be made here to account for [appellant’s] symptoms.”⁴

In a supplemental report dated May 30, 2001, Dr. Kirschberg indicated that appellant’s MRI scan was normal. He stated that, while appellant complained of chronic pain, he could find “no evidence of nerve or in fact, any other subjective abnormality.” Dr. Kirschberg noted that

⁴ In a follow-up note dated May 16, 2001, Dr. Jones again noted that he had nothing further to offer appellant orthopedically.

appellant was “addicted to pain medication.” He concluded that he found “no neurological reason why [appellant] could not be working.”⁵

In a report dated August 15, 2001, Dr. Karin V. Straaton, a Board-certified internist, discussed appellant’s fall from a chair in June 2000. She noted that appellant initially experienced back and hip pain which subsequently “spread all over her body.” Dr. Staaton stated, “[appellant] has chronic pain/fibromyalgia syndrome. She has no objective evidence of nerve root or other involvement. It is very doubtful that her fall from the chair is the cause of the pain syndrome.”

In a September 5, 2001 report, Dr. Jones discussed appellant’s complaints of low back and knee pain. He noted that appellant was applying for disability with the Social Security Administration and stated, “I think [appellant] is dealing with a chronic pain situation that may have been triggered by the events at work.”

By letter dated September 21, 2001, the Office notified appellant that it proposed to terminate her entitlement to compensation on the grounds that she had no further employment-related disability. The Office provided appellant 30 days within which to respond to the proposed notice of termination of compensation.

In a letter dated October 13, 2001, appellant argued that her compensation should not be terminated and disagreed with the medical reports of Drs. Crompton, Kirschberg, Straaton and Durham. Appellant submitted a clinic note dated July 12, 2001 from Dr. Daniel C. Dahl, a Board-certified psychiatrist, who diagnosed major depression and chronic pain. He noted that appellant’s depression began in August 2000 and that she was “upset by the pain and the trouble she had getting work[ers’] comp[ensation].” In a report dated July 27, 2001, Dr. Dahl diagnosed major depression and opined that appellant was disabled from employment. Appellant submitted a report dated August 17, 2001 from Dr. Gerald P. Norris, a Board-certified internist and her attending physician, who diagnosed diffuse myalgias and myofascial symptoms, hypertension, anxiety, depression and chronic pain. He opined that appellant was unable to work.⁶

By decision dated November 21, 2001, the Office terminated appellant’s entitlement to compensation and authorization for medical benefits effective December 2, 2001. The Office found that Dr. Crompton’s opinion represented the weight of the evidence and established that appellant had no further employment-related disability.

In an office note dated November 29, 2001, Dr. Jones discussed appellant’s complaints of pain and noted that the Office had terminated her authorization for further medical treatment. He stated, “[t]his injury apparently occurred when she fell out of a chair at work but definite workup has failed to find any objective lesions that I can refer to as a source of pain secondary to the fall. I think the nature of the fall triggered the events.”

⁵ Dr. Jones evaluated appellant on June 8, 2001 for a worsening of chronic pain of the right lower extremity.

⁶ Appellant also further submitted clinic notes from Dr. Norris dated August 14, January 8, 2001 and May 31, 2001, in which he described his treatment of appellant for myofascial syndrome, fibrosistisis, stress, anxiety and confusion.

By letter dated December 10, 2001, appellant requested a hearing before an Office hearing representative.

In a report dated January 23, 2002, Dr. Jones found that appellant had chronic pain and that, regarding the nature of her pain to her fall at work, “she needs to get the judge to sort it out. I told her I got my information from the patient; that being it was [not] a problem before the accident and is now so I think there is some bearing on it, even though there maybe some emotional distress related to the accident that may be triggered the subsequent problems.” In an April 15, 2002 report, Dr. Jones listed findings on examination and recommended a repeat MRI scan.

A hearing was held on September 24, 2002. At the hearing, appellant submitted a medical report dated November 29, 2001 from Dr. Dahl. He diagnosed major depression caused by chronic pain and opined, “[t]o the extent that her current pain is related to on the job injuries, her depression is work related.” Appellant also submitted medical reports dated from January 29 to May 20, 2002 from Dr. Louis W. Heck, Jr., a Board-certified internist, who treated appellant for generalized muscle pain and osteoarthritis of the knees.⁷ In a report dated June 27, 2002, Dr. David W. Cosgrove, an anesthesiologist, noted appellant’s history of reflex sympathetic dystrophy (RSD) and low back pain “after an apparent fall at work in 2000.” He diagnosed chronic pain, somatization, hypertension and arthritis. In a report dated July 28, 2002, Dr. Norris indicated that appellant “complained of some chronic pain syndromes. She relates the majority of her pain symptomatology to a fall at work in June 2000.”⁸

In a report dated May 29, 2002, Dr. Jones listed findings of positive straight leg testing on the right and stated, “I think this is from her fall at work and that this has resulted in a chronic pain situation. There [are] multiple factoral things going on here.”

In a report dated October 11, 2002, Dr. Dahl noted that Dr. Jones opined that appellant experienced chronic pain since a work injury in June 2000 and that therefore appellant’s depression was “directly related to the injury [that] she suffered at work.”

By decision dated December 18, 2002, the hearing representative affirmed the Office’s November 21, 2001 decision.

LEGAL PRECEDENT -- ISSUE 1

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁹ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.¹⁰ The

⁷ She submitted a report from Dr. Jones dated May 17, 2002, who indicated that he was not sure when appellant could resume work.

⁸ The record reflects that appellant filed occupational disease claim for work-related stress and chronic pain on October 11, 2001.

⁹ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

¹⁰ *Id.*

Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.¹¹

ANALYSIS -- ISSUE 1

The Office terminated appellant's compensation benefits finding that the weight of the medical evidence was represented by the opinion of the Office referral physician, Dr. Crompton, which established that appellant had no further employment-related disability. The Board has carefully reviewed the opinion of Dr. Crompton and notes that it has reliability, probative value and convincing quality with respect to the conclusions reached regarding the relevant issue of the present case. He found that appellant had no physical condition which could be causing her various symptoms and diagnosed malingering. Dr. Crompton provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he analyzed the factual and medical history as well as the findings on physical examination and reached conclusions regarding appellant's condition which comported with this analysis.¹² Dr. Crompton provided medical rationale for his opinion by explaining that, based on appellant's history and his physical examination, it was not possible that a physical condition caused the type of symptoms complained of by appellant. He did, however, recommend referring appellant for a neurological evaluation to rule out RSD due to her injury. Pending the results of the neurological examination, he found that she could resume her usual employment without restrictions. Dr. Kirschberg, a Board-certified neurologist, found that appellant had a normal EMG and that she had no objective findings of any impairment, including radiculopathy, neuropathy, entrapment, an injury to the sciatic nerve or RSD. In a supplemental report dated May 30, 2001, Dr. Kirschberg noted that appellant had a normal MRI scan of the lumbar spine and found that she could resume her usual employment.

The remaining evidence of record, submitted prior to the Office's termination of compensation, is insufficient to support that appellant remained disabled due to her employment injury. In a report dated February 27, 2001, Dr. Durham opined that appellant's June 1, 2000 employment injury was not the cause of her complaints of pain and that she should resume work. Dr. Stratton, in an August 15, 2001 report, diagnosed chronic pain and fibromyalgia and found that it was "very doubtful" that appellant's June 2000 fall from a chair caused her symptoms. On April 16, 2001 Dr. Jones diagnosed either fibromyalgia or a conversion reaction and noted that he had found no physical cause for appellant's disability. These physicians' reports do not support that appellant had any further disability caused by her accepted condition of lumbago.

In a report dated September 5, 2001, Dr. Jones noted findings of low back and knee pain and found that appellant had a "chronic pain situation that may have been triggered by the events at work." However, Dr. Jones' opinion that appellant's employment injury "may have triggered" her chronic pain is speculative in nature and thus of little probative value.¹³

¹¹ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

¹² See *Melvina Jackson*, 38 ECAB 443 (1987).

¹³ *Jennifer L. Sharp*, 48 ECAB 209 (1996).

The record also contains reports from Dr. Dahl who treated appellant for major depression and chronic pain and reports from Dr. Norris, who treated appellant for diffuse myalgias, hypertension, anxiety, depression and chronic pain. Both physicians found that appellant was unable to perform employment. However, neither Dr. Dahl nor Dr. Norris addressed the cause of the conditions that they diagnosed and their reports are of diminished probative value. Medical evidence that does not offer any opinion on the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁴ Further, neither physician addressed the relevant issue of whether appellant had any further disability causally related to her accepted condition of lumbago, or pain in the lumbar region.

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSIE M. HARRIS and U.S. POSTAL SERVICE,
Marina Mail Processing Center, Marina Del Ray, CA

*Docket No. 03-1683; Submitted on the Record;
Issued*

DECISION and ORDER

Accordingly, the Office met its burden of proof to terminate appellant's compensation benefits.

LEGAL PRECEDENT -- ISSUE 2

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.¹⁵ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.¹⁶

ANALYSIS -- ISSUE 2

In this case, the Office met its burden of proof to terminate authorization for medical benefits through the opinion of Dr. Crompton, the Office referral physician, who found that appellant had no further condition causally related to her accepted employment injury and provided rationale for his opinion by explaining that her history and physical examination

¹⁴ *Linda I. Sprague*, 48 ECAB 386 (1997).

¹⁵ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

¹⁶ *Id.*

showed that she had no physical condition that could cause her symptoms. Dr. Crompton's opinion is bolstered by the report of Dr. Kirschberg, who reviewed appellant's normal EMG studies and opined that she had no evidence of a neurological condition. The remaining evidence of record is devoid of an opinion that appellant requires further medical treatment due to her accepted condition of lumbago.

LEGAL PRECEDENT -- ISSUE 3

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden of proof shifts to appellant to establish that she has disability causally related to her accepted employment injury.¹⁷ To establish a causal relationship between the claimed disability and the employment injury, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹⁸

ANALYSIS -- ISSUE 3

Subsequent to the Office's termination of compensation, appellant submitted a note dated November 29, 2001 from Dr. Jones, who indicated that she continued to complain of pain. He opined that appellant's "injury apparently occurred when she fell out of a chair at work" but noted that he could not account for her pain with objective evidence. Dr. Jones stated, "I think the nature of the fall triggered the events." However, Dr. Jones' opinion is couched in speculative terms and, therefore, of diminished probative value.¹⁹ Additionally, Dr. Jones noted that the objective findings did not explain appellant's subjective complaints of pain. A medical report based on subjective complaints of symptoms unsupported by objective physical findings of disability is of diminished probative value.²⁰

On January 23, 2002 Dr. Jones related that a judge should determine the relationship between her pain and a fall at work. He noted that the pain was not "a problem before the accident and is now so I think there is some bearing on it..." The Board has held, however, that the opinion of a physician that a condition is causally related to an employment injury because the employee was asymptomatic before the employment injury is insufficient, without supporting rationale, to establish causal relationship.²¹

On May 29, 2002 Dr. Jones opined that appellant's employment injury "resulted in a chronic pain situation." Dr. Jones, however, provided no rationale for his opinion. Medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.²² Further, Dr. Jones did not find any

¹⁷ *George Servetas*, 43 ECAB 424, 430 (1992).

¹⁸ *John M. Tornello*, 35 ECAB 234 (1983).

¹⁹ *Judith J. Montage*, 48 ECAB 292 (1997).

²⁰ *John J. Clark*, 32 ECAB 1618 (1981).

²¹ *Thomas R. Horsfall*, 48 ECAB 180 (1996).

²² *Arlonia B. Taylor*, 44 ECAB 591 (1993).

objective signs of disability and, thus, his report is insufficient to support the payment of compensation.²³

On November 29, 2001 Dr. Dahl diagnosed major depression due to appellant's chronic pain. He stated that, if appellant's chronic pain was due to her employment injury, then her depression should be considered work related. In a report dated October 11, 2002, Dr. Dahl noted that Dr. Jones attributed appellant's chronic pain to a work injury in June 2000 and consequently concluded that appellant's depression was due to her employment injury. The Office did not accept appellant's claim for depression. Appellant, therefore, has the burden of proof in establishing that her depression condition is causally related to employment factors through the submission of rationalized medical opinion evidence.²⁴ The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate medical and factual background.²⁵ Dr. Dahl's statement that appellant's depression was due to her work injury is conclusory in nature and, thus, insufficient to meet appellant's burden of proof.

Dr. Norris discussed appellant's complaints of pain and noted that appellant related her pain to "a fall at work in June 2000." However, he merely described appellant's belief that her pain was due to her employment injury, rather than making an independent finding and, thus, his report is of little probative value.²⁶

Appellant submitted numerous medical reports from Dr. Heck, who treated appellant for muscle pain and osteoarthritis of the knees. She also submitted a report from Dr. Cosgrove, who noted appellant's history of an "apparent" fall at work in 2000 and diagnosed chronic pain, somatization, hypertension and arthritis. However, as neither Dr. Heck nor Dr. Cosgrove specifically addressed the cause of the diagnosed conditions, their reports are of little probative value.²⁷ Appellant, consequently, has not met her burden of proof to establish any continuing employment-related disability.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation effective December 2, 2001 on the grounds that she had no further disability causally related to her June 1, 2000 employment injury. The Board also finds that the Office properly terminated appellant's authorization for medical benefits. The Board finds that appellant has not established that she had any continuing disability after December 2, 2001 due to her accepted employment injury.

²³ *Barry C. Peterson*, 52 ECAB 120 (2000).

²⁴ *Charlene R. Herrera*, 44 ECAB 361 (1993).

²⁵ *Connie Johns*, 44 ECAB 556 (1993).

²⁶ *Earl David Seal*, 49 ECAB 152 (1997).

²⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 18, 2002 is affirmed.

Issued: February 18, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member